IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 391 OF 2007

Kakasaheb Shidu Mhaske)
Adult, Indian Inhabitant, residing at 5/12,)
Mun. Officers' Quarters, Haji Ali, Mumbai-400034)..Petitioner

Versus

1. The Municipal Corporation of Greater Mumbai)
having its principal office at Municipal Head)
office, Mahapalika Marg, Fort, Mumbai-400001)

2. State of Maharashtra, through its)
Principal Secretary, Mantralaya,)
Mumbai-400 032.)

3. The Tahsildar, Taluka Kadegaon,)
Tehsil Office, Kadegaon, Dist. Sangli.)..
Respondents

Mr. Atul Rajadhyaksha, instructed by Mr. V.S. Lonkar, for the petitioner.
Mrs. A.K. Savla for respondent No.1.

CORAM: **SWATANTER KUMAR, C.J.** &
S.R. SATHE, J.

Judgment reserved on: April 03, 2007
Judgment delivered on: April 19, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

Short question that falls for consideration of the Court in the

present writ petition under Article 226 of the Constitution of India is whether an employee at the fag end of his service career can claim a right for change of date of birth and grant of consequential reliefs as a result thereof?

2. The facts giving rise to the above question are that the petitioner, K.S. Mhaske, was born on 24th February, 1951, at Ambegaon, Tal. Kadegaon, Dist.Sangli. According to him, the date of birth noticed in the service records of the petitioner was 1st June, 1949. He was interviewed by the Maharashtra Public Service Commission for the post of Ward Officer (now designated as Assistant Commissioner) in the services of the first respondent as "Other Backward Class" candidate and was appointed to that post on 12th January, 1992. Thereafter he was promoted to the post of Deputy Municipal Commissioner on 2nd July, 2005, and in normal course he would have superannuated from the post on 24th February, 2009. It is the case of the petitioner that his family hails from village Ambegaon, Taluka Kadegaon, District Sangli, and he is the only person who has been well educated and his educational qualification is that of a Post Graduation Degree in Labour Welfare and Industrial Relations of the

Mumbai University. His father was an illiterate person and the family members were left to the mother of the petitioner who did not have a child after her marriage with father of the petitioner. Resultantly, the grand-mother Salubai got the second marriage of the father of the petitioner organised and was married in 1947 with the daughter of the brother of the grand-mother of the petitioner named Muktabai. The step mother of the petitioner gave birth to a child on 24th January, 1948. He was sick from the birth. Thereafter, the petitioner was born to his mother Sonabai on 24th February, 1951 at Ambegaon. However, incorrect entries were made in the record to show that a girl was born to the petitioner's father and mother on that day and record of the birth shows the name of newly born as "Khasibai". Presumably, the grand-mother of the petitioner recorded the birth of a female so that the property belonging to the petitioner's father did not devolve upon the child of the petitioner's mother. It is also stated that there was no record of petitioner's birth in the birth register whereas birth details of the all his step brothers and sisters have been recorded in the birth register. According to the petitioner, his birth date was recorded as 1st June, 1949, in all the office records including his service record maintained in the office of the first respondent. The mother of the

petitioner expired in 1964 and his step mother expired in 1998. Somewhere in April, 2006, the petitioner happened to meet his maternal uncle Shri Dada Pandurang Jarag, aged about 75 years, and during talks it was disclosed that the correct date of birth of the petitioner was in 1951 as no female child was born at that time and it was the petitioner who was born. On the basis of this, the petitioner made an application to the third respondent on 9th June, 2006, informing him about the wrong entry in the birth register. Along with this application, affidavits were also filed while referring to various lacunae in making the entry on the records. Thereafter he got published in Maharashtra Government Gazette Part-II dated 1st June, 2006, the change in his date of birth from 1st June, 1949 to 24th February, 1951 at page 744. As a result of this, the petitioner requested the first respondent for correction of his date of birth in the service record. In terms of Rule 67 of the Municipal Service Regulations, an employee shall retire at the age of 58 years. He was to retire on 1st June, 2007, and consequently prayed for continuation of his service for another two years vide his representation dated 30th November, 2006, to which the petitioner did not receive any reply despite a reminder dated 9th January, 2007, resulting in filing of the present writ petition.

3. This petition was opposed by the respondents on the ground that there was no justification for alteration of date of birth contrary to the service record of the petitioner. They also produced documents to show that the petitioner had given an undertaking about the correctness of his date of birth at the time of entry into service and the petitioner, in any case, was not estopped from altering his stand particularly when he has taken benefit thereof at the time of joining the service. It is also the case of the respondents that the proceedings alleged to have been taken by the petitioner are of no consequence and do not in any way bind the Corporation.

4. We may also notice at this stage that at the time when the petition was filed, the representation of the petitioner had not been rejected and the grievance of the petitioner was that his representation for change of date of birth has not been even attended to by the respondent-Corporation. However, during the pendency of this petition, vide order dated 30th March, 2007, the representation of the petitioner has been rejected.

5. It is a common case of the parties before us that there is no rule or instructions framed by the Corporation which controls the alteration or correction of date of birth. Thus, the present case has to be governed by the general principles. Undisputed facts which emerge from the record show that the petitioner had declared his date of birth as 1st June, 1949 at the time of his entry into service. The petitioner was an educated person and was fully aware of the consequences of an undertaking given to his employer at the time of his entry into service. The undertaking given by the petitioner in fact debarred him from claiming any alteration in the date of birth given in his service record. Usefully, at this stage reference can be made to the relevant part of the undertaking given by the petitioner under his signature.

> "That the date of birth as stated in the documentary evidence produced by me is correct. The date of birth (i.e. the date, month and year) is correctly recorded in my service Book/sheet as per the documentary evidence. I shall, therefore, not come forward with a request to change the date of birth as recorded in the Service Book/Sheet."

In addition to the above undertaking, the petitioner had also given a school certificate showing the date of birth as 1st June, 1949 and entry to the school in the year 1955. The story now put forward by the petitioner that in 2006 his maternal uncle disclosed him the fact that no female child was born and the petitioner was born on 24th February, 1951 and not on 1st June, 1949, is somewhat difficult to believe. In his long life, the petitioner must have visited his village, his parents and relations. The version of the petitioner suffers from the element of in-built contradictions and is not beyond the limit of suspicion. The steps taken by the petitioner in taking out a publication in the gazette by producing self-serving documents before the other authorities and getting the correction made in the records would in no way bind the Corporation. No doubt, under Section 15 of the Registration of Births and Deaths Act, 1969, the competent authority has the discretion to correct and cancel the entries in the said registers. This is a power which is vested in the authorities and they can exercise their discretion in accordance with law. The Corporation was not a party before the Registrar for correction of the date of birth. In fact, there was no occasion for the same. By these administrative proceedings taken by

the petitioner by producing self-serving documents, the Corporation cannot be compelled in law and fact to alter the date of birth of the petitioner in the service record. According to the petitioner, he had come to know from his maternal uncle, who was stated to be 75 years old, in April, 2006, but still he waited and created documents in his own favour and then moved the Corporation only in November, 2006.

6. It is the settled rule of law that correction in date of birth at the fag end of the career cannot be permitted unless and until the Rules give a right to an employee. The documents produced by the petitioner, particularly Exhibit-B, show the date of birth of brother and sisters of the petitioner. It is difficult to believe that date of birth is correctly stated of all the children in those records which also shows the date of birth of the petitioner as 1st June, 1949. The learned counsel appearing for the petitioner relied upon a judgment of the Division Bench of Kerala High Court in the case of *Krishnarajan* vs. *Doraswamy Chettiar and others,* AIR 1966 Ker. 305, to contend that the entries in these records are best evidence of the date of birth and can safely be accepted unless they are shown to be wrong. As the entries were altered by the authorities in exercise of their powers, the Corporation

should have accepted the same when produced. This argument is without any substance. Firstly, the judgment on facts have no application to the present case. Secondly, the judgment does not provide for an absolute right in favour of an employee to claim alteration of the date of birth in the service records on the basis of such entry. In fact, the Court has specifically used the words and these are relevant but rebuttable that correct age of the petitioner had been shown by him in his service records by an undertaking and furthermore by furnishing documentary evidence.

7. We may also refer to a Division Bench judgment of the Delhi High Court in the case of *Brigadier Ashok Kumar Singh* vs. *Union of India*, decided on July 13, 2006, where the Court in somewhat similar circumstances held as under:-

> "It is difficult even for the Court to believe that the petitioner would have disclosed and written in his own handwriting incorrect date of birth repeatedly at different times i.e. In the year 1971 as well as in 1972. It may also be noticed that in the Indian Military Academy Examination form the petitioner again in column 7 had declared his date of birth as 16.8.51. In fact, the petitioner would be estopped from challenging the correctness of the date of birth as filled in by him at different occasions in his own hands, by his own conduct. Learned counsel appearing for the petitioner heavily

relied upon the judgment of the Supreme Court in the case of *Union of India vs. C. Rama Swamy and ors.* 1997 Vol. 4 SCC 647 to contend that the respondents ought to take into consideration the corrected date of birth of the petitioner in furtherance to the certificate issued by the Secondary Board. This contention is void of any substance firstly because C. Ramaswamy was a member of the IPS and was governed by the relevant rules applicable to the Indian Administrative Services. Rule 16-A provides for determination of date of birth and sub-Rule 4 (a) indicates that every member of the service holding office immediately before the commencement of the All India Services Commencement Rules, 1971, shall within three months from such declaration make a declaration as to the date of birth. Such a chance was given for correcting the date of birth on the amendment of the said rules. The Supreme Court also held that sub-Rule 4 is related to correction in date of birth in the service record of the officer resulting from a bona fide clerical mistake in acceptance of date of birth. The facts and question of law before the Supreme Court was distinct and different than in the present case. In the present case not only that the petitioner has repeatedly disclosed his date of birth as 15.8.51 but had acted thereupon even by taking the subsequent examinations. In other words, not only that the respondents had accepted the date of birth declared by the petitioner which was supported at the relevant time by a certificate issued by the Secondary school, but even the petitioner himself accepted and acted upon the fact that his date of birth was 15.8.51. The subsequent conduct of the parties to the event, is a relevant consideration before the Court and can tilt equities between the parties.

8. It is difficult to provide a straight-jacket formula which would be uniformally applicable to the cases without reference to peculiar facts and circumstances of each case. Whenever a person joins service and makes declaration of his date of birth in his own handwriting,

normally he cannot go back from such an admission unless there were exceptional and compelling circumstances of a bona fide mistake. In the case of *Harchand Singh v. Punjab State* , 2004 (4) SLR (Pb. And Hr.) 349, the court dismissed the petition on the ground that the application for correction had been made after 20 years and the claim of the petitioner was belied to his own earlier documents and in fact, he took two years advantage in entering the Government service as he could not enter the service unless he was 18 years old. In the case of *P.S. Bheemeswara Rao v. Regional Joint Director of Intermediate Education*, 2004 (3) SLR (Andhra Pradesh) 347, the court also stated the principle that a party at the fag end of his career cannot seek correction of entries in the service record as entry regarding date of birth in service record is final. Of course, it may have some exceptions.

9. Latches has been a very material factor in accepting or denying a relief to the petitioner raising such a claim. In the case of *Sheo Pujan Lal v. State of Bihar,* 2004 (1) SLR (Patna) (DB) 593, the court held that a petitioner, who had declared his age in the matriculation certificate and such a date was entered in the service record, later on, cannot be heard to argue that there was a different date of birth more advantageous to the petitioner and he had not declared correct date of birth in his certificate. The Supreme Court in the case of *State of Punjab* v. *S.C. Chadha*, 2004 (2) SLR (SC) 741 held as under.

> "Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules a period had been prescribed within which

> if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained. The sole object of such rules being that any such claim regarding correction of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. In the case of *State of Assam vs. Daksha Prasad Deka*, 1970 (3) SCC F 624 : (1971) (2) SLR 14 (SC),this Court said that the date of the compulsory retirement must in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure."

In the case of *Government of Andhra Pradesh vs. M. Hayagreev Sarma*, 1990 (2) SCC 682 : (1990) (2) SLR 742 (SC) the A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 were considered. The public servant concerned had claimed correction of his date of birth with reference to the births and deaths register maintained under the Births,Deaths and Marriages Registration Act, 1886. The Andhra Pradesh Administrative Tribunal corrected the date of birth as claimed by the petitioner before the Tribunal, in view of the entry in the births and deaths register ignoring the rules framed by the State Government referred to above. It was, inter alia, observed by this Court : "The object underlying Rule 4 is to avoid repeated applications by a government employee for the correction of his date of birth and with that end in view it provides that a government servant whose date of birth may have been recorded in the service register in accordance with the rules applicable to him and if that entry had become final under the rules prior to the commencement of 1984 Rules, he will not be entitled for alteration of his date of birth." As

observed by this Court in *State of Tamil Nadu vs. T.V. Venugopalan*, 1994 (6) SCC 302: (1994) (4) SLR 626 (SC) and *State of Orissa and others v. Ramanath Patnaik,* 1997 (5) SCC 181: (1997) (2) SLR 799 (SC) when the entry was made in the service record and when the employee was in service he did not make any attempt to have the service record corrected, any amount of evidence produced subsequently is of no consequence. The view expressed in R. Nirubakaran's case (supra) was adopted.

In view of the aforesaid, the inevitable conclusion is that the High Court was not justified in interfering with the orders of the Government and directing correction of the date of birth in the service records of the respondent as now claimed by him. The appeal is allowed but without any order as to costs.

10. The above enunciated principles clearly demonstrate that a discretion is vested in the appropriate authorities of the respondents to accept or decline the request of the petitioner for change of date of birth. Unless the discretion is exercised arbitrarily or offends specific rules which are to the benefit of the employee, the court would not normally disturb such discretion. In the present case, the petitioner is a senior officer and was expected to act with greater care in regard to the matter of his service record. The petitioner consistently accepted and acted upon his date of birth being 16.8.51 by his declaration in writing and otherwise. We are unable to see any patent error in exercise of discretion by the respondents and particularly in face of instruction dated 21.4.64 issued by the Government."

8. Similar view was taken by the Jammu and Kashmir High Court in the case of *Abdul Rashid Sogami* vs. *State of Jammu & Kashmir*, decided on 28th September, 2000, where the Court clearly

stated the principle that a date of birth which has been authenticated by the employee himself in his service record cannot be corrected at the fag end of the service and the Court held as under:

> "The plea of learned counsel for the petitioner that he came to know about the wrong date of birth recorded in the service record in November, 1999 is misplaced as the petitioner has signed the service book when it was prepared at commencement of the service and signed the relevant column of the service book in token of the correctness of the entry recorded in the service book.
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> The petitioner is a qualified person and he cannot take shelter that he was not aware of the date of birth recorded in the service record. Supreme Court in *Union of India* v. *Saroj Bala*, 1996 SC 1000 has held that candidate belonging to educated family entering service after competing in All India Service Examination and remaining in Service for 18 years is not entitled to seek correction of date of birth.
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> It is settled proposition of law that the public servant who approaches the court, like the petitioner, at the fag end of service isn't entitled to seek correction of the date of birth as pronounced by the Supreme Court in *Burn Standard Co. vs. Dinabandhu Majundar,* AIR 1995 SC 1500, holding that:
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> > "The fact that an employee of Govt. or its instrumentality who will be in service for over decades, with no objections whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his service record, the very conduct of non-raising of an objection in the matter by the employee in our

> view should be a sufficient reason for the High Court not to entertain such applications on grounds of acquiescence undue delay and laches. Moreover discretionary jurisdiction of the High Court can refer be said to have been reasonable and judicially exercised if it entertains such writ petition, for no employee, who had grievance as to his date of birth "service and leave record" could have genuinely waited till the fag end of his service career to get it corrected by availing of the extra-ordinary jurisdiction of a High Court. Therefore, we have no hesitation in holding that ordinarily High Court should not, in exercise of its discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality towards the fag end of his service, seeking correction of his date of birth entered in his "Service and Leave record or Service Register with an avowed object of continuing in service beyond the normal period of his retirement."

The date of birth of the petitioner supplied by him to the respondents has been recorded in the service record of the petitioner at the commencement of the employment. Till 1999 the petitioner has not challenged the recorded date of birth in the service book which has been also in the notice of the petitioner as he has also put his signatures on the relevant page on the service book wherein the date of birth of the petitioner has been recorded. In such a situation the principle of Estoppel applies that the petitioner cannot seek change of Date of Birth in view of the law laid down by the Supreme Court in 1997 in case *Union of India vs. Rama Swami* reported in 1997 SC page 2057, para 25 and 26 which are extracted below:-

> "25. In matters relating to appointment to service various factors are taken into

> consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, and older person is ordinarily considered to be more mature and therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned, this being so we find it difficult to accept the broad proposition that the principle of Estoppel would not apply in such a case where the age of person who is sought to be appointed may be a relevant consideration to assess his suitability."

9. Reference can also be made to a very recent judgment of the Supreme Court in the case of *State of Gujarat and others* vs. *Vali Mohmed Dosabhai Sindhi*, reported in (2006) 6 SCC 537, where the Court enunciated the principle that onus is on the applicant to prove

about the wrong recording of his date of birth in his service record and he is expected to satisfy the authorities of such mistake. Even then, the Court or the Tribunal has to satisfy itself that it has resulted in real injustice to the applicant and essentially such incorrect entry has resulted in real injustice to the applicant and such correction of the date of birth has to be made in accordance with the prescribed procedure and within the time specified under the Rules. While accepting the appeal of the State, the Court dismissed the writ petition praying for correction of date of birth which had been allowed by the High Court. In the present case, the request to the department for correction of the date of birth has been made after considerable delay and also there is no grave injustice being done to the applicant as he had sought the employment taking the benefit of date of birth being 1949.

10. Applying the above principles to the facts and circumstances of the present case, it is more than clear that the petitioner is trying to take advantage of the record which are nothing but self-serving documents. The version of the petitioner about receiving intimation from his maternal uncle in April, 2006, suffers from the element of

suspicion. **On the score of probabilities also the version that petitioner was born on 24th February, 1951, appears to be incorrect because as per the record, he was admitted in School in 1955, means at the age of 4 years, which is not possible**. The petitioner cannot take advantage of his own wrong particularly when on the basis of that wrong he had acquired advantage at the time of his entry to the service. Keeping in view the fact that the date of birth of the petitioner was 1st June, 1949, the petitioner was granted employment and he has already taken benefit of service of that period. Even if it is assumed at this stage that the petitioner was actually born in the year 1951, no right, much less any indefeasible right, is vested in an employee to claim correction in his date of birth which he has authenticated himself in his service records. No error of jurisdiction or arbitrariness can be traced in exercise of discretion by the Corporation in the facts and circumstances of the present case. Resultantly, we dismiss this writ petition, leaving the parties to bear their own costs.

CHIEF JUSTICE

S.R. SATHE, J.